
DIGEST

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Nowlin

HB No. 666

Abstract: Authorizes the prevailing party in certain collection actions to recover attorney fees and costs under certain circumstances.

Present law authorizes a local collector to employ private counsel to assist in the collection of taxes, penalties, or interest due under present law, or to represent him in any proceeding. If taxes, penalties, or interest due are referred to an attorney for collection, an additional charge for attorney fees, in the amount of 10% of the taxes, penalties, and interest due shall be paid by the taxpayer. Present law makes an exception for amounts timely paid under protest with a return that is not delinquent or paid under protest to a vendor.

Proposed law changes present law by adding authorization for a local collector to employ private counsel in any dispute, contest, or other controversy involving the determination of sales and use tax due.

Proposed law further requires that attorney fees and legal expenses incurred by a local collector for the employment of private counsel be reimbursed to the local collector by the local taxing authorities and recoverable as a deduction from current collections, unless such attorney fees and legal expenses are recoverable as a reimbursement from the taxpayer.

Proposed law provides that a taxpayer shall not be subject to the payment of attorney fees unless the local collector is the prevailing party entitled to reimbursement of attorney fees and costs. Further provides that the reimbursement of attorney fees and costs shall not exceed 10% of the taxes, penalties, and interest at issue, unless the position of the non-prevailing party is substantially justified. Proposed law defines "prevailing party". A position is substantially justified if it has a reasonable basis in law and fact. The reimbursement amount for attorney fees and costs shall be subject to the discretion of the court as to reasonableness.

Proposed law provides that the provisions of proposed law shall not apply to amounts timely paid under protest by the taxpayer with a return that is not delinquent or paid under protest to a vendor in accordance with law.

Proposed law provides that a local collector, which is a non-prevailing party in a collection action, assessment appeal, or an action to recover amounts paid under protest, shall be reimbursed by the local taxing authorities for attorney fees and costs incurred by the tax collector and recoverable as a deduction from current collections.

Proposed law provides that the provisions of proposed law shall only apply to matters referred to private counsel by the local collector.

Proposed law provides that a local collector may waive the attorney fee award and shall be considered timely if the notice of the waiver is mailed to a taxpayer by certified mail, return receipt requested, within 15 days of the filing of a suit. If a local collector timely waives its attorney fee award, a taxpayer may not recover attorney fees.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:337.13.1)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Added authorization for a local collector to employ private counsel in any dispute, contest, or other controversy involving the determination of sales and use tax due.
2. Changed the bill from one which authorizes a taxpayer who successfully defends a collection action to recover attorney fees and costs to one which authorizes the prevailing party in a collection action to be entitled to the reimbursement of attorney fees and costs.
3. Added definitions for "prevailing party".
4. Added requirement that attorney fees and legal expenses incurred by a local collector for the employment of private counsel be reimbursed to the local collector by the local taxing authorities and recoverable as a deduction from current collections, unless such attorney fees and legal expenses are recoverable as a reimbursement from the taxpayer.